



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,945	11/25/2003	Leonid Bravinski	92953-4	5884
22463	7590	09/15/2009		
SMART & BIGGAR 438 UNIVERSITY AVENUE SUITE 1500, BOX 111 TORONTO, ON M5G 2K8 CANADA			EXAMINER SAFAVI, MICHAEL	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 09/15/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/721,945

**Applicant(s)**

BRAVINSKI, LEONID

**Examiner**

MICHAEL SAFAVI

**Art Unit**

3637

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-25, 30, 69, 70, 80, 81 and 83-132 is/are pending in the application.
- 4a) Of the above claim(s) 70, 99-103, 118, 119, 123, 128 and 129 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 89-98 and 102 is/are allowed.
- 6) ☒ Claim(s) 23-25, 30, 69, 80, 81, 83-88, 104-117, 120-122, 124-127 and 130-132 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Claims 70, 99-103, 128, 118, 119, 123, and 129 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species of the invention, (either Fig. 13A or Fig. 14A), there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 30, 2007.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: '836b'. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction

of the following is required: The specification fails to recite or define a "compression member". The specification fails to recite or define an "abutment member".

The disclosure is objected to under 37 CFR 1.74 because of the following:  
Reference character 248 has been used to denote both a "rod member" and a "rib member". Reference character 677 has been used to denote both "bracer members" and "panel plates".

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 115, 106, 121, and 132 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification does not appear to have originally disclosed "said common rod member is in abutment with said first and second connectors, wherein said first panel member is compressed proximate both said first connector and said second connector" as now appears in **claim 115**. Such appears as new matter. Otherwise, the specification

does not appear clear and complete as to how "said common rod member is in abutment with said first and second connectors, wherein said first panel member is compressed proximate both said first connector and said second connector".

The specification does not appear to have originally disclosed "said second panel member has a relatively high degree of thermal degree of insulation compared to said first panel member" as now appears in **claim 121**. Such appears as new matter.

The specification does not appear to have originally disclosed "a non-removable second panel member" as now appears within line 11 in **claim 132**. Such appears as new matter.

The specification does not appear to have originally disclosed "wherein the lamination of said inner and outer surfaces with said plastic film permits the material of said first panel member to be slightly compressed by said first connector resulting in the formation of a rigid or semi-rigid connection between said first panel member and said spacer" as now appears within lines 27-31 in **claim 132**. Such appears as new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 84, 30, 80, 85, 81, 108, 109, 86-88, 110, 24, 23, 25, 69, 83, 104, 105, 107, 111, 112, 124-127, 113-115, 106, 116, 117, and 120-122 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point**

**out and distinctly claim the subject matter which applicant regards as the invention.**

**Claim 84**, line 8, it is not clear as to what is being defined by "and an opposed outer surface". Is this yet another outer surface forming part of the claimed "panel unit"? To what, otherwise does "an opposed outer surface" refer? Does claim 84 introduce a third panel member as forming part of the claimed "panel unit"?

**Claim 86**, lines 6-7, it is not clear as to what is being defined by "and opposed outer surface; said first and second panel members each having outer surfaces". To what does "and opposed outer surface" refer? Is this yet another outer surface forming part of the claimed "panel unit"? Does claim 86 introduce a third panel member as forming part of the claimed "panel unit"?

**Claim 110**, 13-16, it is not clear as to what is being defined as "at least one compression member". The specification does not appear to set forth any "compression member". Further, how does such compression member about "with at least one other component of said panel unit"? It is not clear as to what is being defined by "said compression member being in abutment with at least one other component of said panel unit". To what does "one other component of said panel unit" refer? Lines 38-40, it is not clear as to what is being defined by "said strengthened first panel member is adapted to be slightly compressed in locations created by cooperation of said first connector, said tie member and said at least one compression member". The specification does not appear to clearly set forth how a single connector, tie member and compression member serve to compress a plurality of locations. Lines 41-44, "said

compressed locations of said material of said first panel member created by co-operation of said first connector, said transverse tie member and said at least one compression member" lacks antecedent basis within the claim. It is therefore, not clear as to what "said compressed locations of said material of said first panel member created by co-operation of said first connector, said transverse tie member and said at least one compression member" refers.

**Claim 111**, lines 29-30, it is not clear as to what is being defined by "at least one compression member connected to said first transverse tie member and to said second transverse tie member". The specification does not appear to clearly set forth how a single compression member, (or any "compression member"), is "connected to said first transverse tie member and to said second transverse tie member".

**Claim 112**, it is not clear as to how "said at least one compression member comprises at least one abutment member". The specification does not appear to clearly set forth a compression member nor how a compression member comprises at least one abutment member. Line 3, "said other components of said spacer" lacks antecedent basis within the claim. It is therefore, not clear as to what "said other components of said spacer" refers.

**Claim 113**, it is not clear as to what is being defined by "said at least one abutment member is interconnected to both said first and second transverse tie members". The specification does not appear to clearly set forth how a single abutment

member, (or any "abutment member"), is "interconnected to both said first and second transverse tie members".

**Claim 115**, it is not clear as to how "said common rod member is in abutment with said first and second connectors, wherein said first panel member is compressed proximate both said first connector and said second connector". The specification does not appear to clearly set forth "said common rod member is in abutment with said first and second connectors, wherein said first panel member is compressed proximate both said first connector and said second connector".

**Claim 121**, it is not clear as to what is being defined by "thermal degree of insulation". How does said second panel member have a relatively high "thermal degree of insulation"?

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 110, 83, 104, and 107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boeshart '592 in view of Harkenrider et al. '126.**



Boeshart '592 discloses, Figs. 1 and 2 for example, a panel unit for use as part of a concrete form for a concrete wall, said panel unit comprising: first and second spaced apart longitudinally oriented foamed plastic panel members 34 defining a form space there between; said panel members having respective outer opposed surfaces 34a; a spacer 12 comprising at least one transverse tie member 18 secured to and extending between said first and second panel members 34, said transverse tie member having a first end 18a being adapted for securing said transverse tie member to a first connector 14 to mount said spacer to first panel member, said transverse tie member having a second end 18b being adapted for securing said transverse tie member to a second connector 14 to mount said spacer to said second panel member; said first connector being operable to be released from said first panel member to assist in facilitating the removal of said first panel member from said tie member; and wherein said first connector comprises a connector assembly for use in securing a panel member to said spacer with said transverse tie member, said connector assembly comprising: a cap 32 member having a flange cap portion and a shaft portion 28, said shaft portion with an end having an opening, (within 28a), adapted to be interconnected to an end portion 18a/18b of said tie member; and a bushing member 16 having a flange portion 26 and an axially aligned shaft portion 24 with an end opposite to said flange portion, said bushing member having a continuous cavity formed in and passing through said flange portion and said shaft portion, said shaft portion of said cap member being receivable axially into said continuous cavity of said bushing member through said flange portion toward said end of said shaft portion so as to be able to engage said end of said

transverse tie member extending through said end of said bushing member into said continuous cavity wherein said first panel member is held between said flange portion of said cap member and said flange portion of said bushing member and wherein said cap member is axially moved toward said transverse tie member, such that a panel member is compressed between said flange portion of said cap member and said flange portion of said bushing member to provide a rigid connection between said connector assembly, said first panel member and said transverse tie member. The limitation "and wherein said cap member is axially moved toward said transverse tie member, such that a panel member is compressed between said flange portion of said cap member and said flange portion of said bushing member to provide a rigid connection between said connector assembly, said first panel member and said transverse tie member" serves only to set forth a possible procedure and effect with Boeshart serving to read upon all of the positively recited structural limitations of the claim language.

Whereby, in Boeshart the shaft portion 28 of cap 14 is receivable axially into a continuous cavity of bushing member 16. The shaft portion 28 is adapted to be interconnected with an end 18b of the tie member 12. The cap member 14 can be axially moved toward the transverse tie member 12, such that a panel member 34 can be compressed between said flange portion 32 of said cap member 14 and said flange portion 26 of said bushing member 16.

Boeshart '592 does not appear to specifically disclose the foamed plastic panel members as "having inner surfaces laminated with a plastic film" having "non-adhesive

properties" such that the inner surface will tend not to bond extensively to the hardened concrete.

However, Harkenrider et al. '126 teaches utilization of a plastic film upon the face of the concrete form to provide a relatively non-stick surface. Therefore, to have provided either of the Boeshart form panels 34 with a plastic film upon the inner face of the concrete form 34 to provide a relatively non-stick surface would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Harkenrider et al. '126.

**Claims 110, 69, 83, 104, 105, and 107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boeshart '592 in view of Harkenrider et al. '126 as applied to claims 99 and 100 above, and further in view of Long, Sr. et al. '104.**

Long, Sr. et al. discloses application of a polypropylene layer upon both surfaces of a foamed plastic panel member. Therefore, to have further provided a polypropylene film along both sides of either Boeshart form panel 34, thus serving to encase the panel in a protective layer as well as allow for interchangeability between sides of each form panel, would have constituted an obvious to one having ordinary skill in the art at the time the invention was made as taught by Long, Sr. et al. Forming the tie 12 or connectors 14/16 of a polypropylene material, thus realizing the benefits of such a widely used plastic material would have constituted a further obvious expedient to one having ordinary skill in the art at the time the invention was made.

**Claims 110, 83, 104, 105, 107, 111, 112, 124, 125, 126, 127, 113, 114, 115, 106, 116, 117, 120, 121, 122, and 130-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cretti 5,809,725 in view of Long, Sr. et al. 6,276,104.**

Cretti discloses, Fig. 1 for example, a panel unit for use as part of a concrete form for a concrete wall, said panel unit comprising: a removable first panel member 6 made from a rigid foamed plastic having an inner surface and an opposed outer surface, said first panel member having a first depth and said first depth being sufficient such that said first panel member can retain unhardened concrete, said first panel member having an aperture; a non-removable second panel member 5 made from a foamed plastic and spaced apart in a transverse direction to define a form space between said first panel member and said second panel member, said inner surface of said first panel member facing an inner surface of said second panel member, said second panel member having a second depth that is greater than said first depth, (col. 8, lines 6-9), and is sufficient to provide thermal insulation; a spacer 1 generally being transversely positioned between said first and second panel members, said spacer assisting in holding said first and second panel members in compression and in generally transversely spaced relation to each other, said spacer comprising a transverse tie 4 member and first and second connectors 2, 3; said transverse tie member having a first end and an opposite second end, said first end being adapted for securing said transverse tie member to a first connector mounted through said aperture of said first panel member in such manner that said first panel member is compressed; said first connector being adapted to be removable from the tie member after said form

space has been filled with unhardened concrete and said concrete has hardened; said first panel member being adapted to be compressed proximate said aperture while maintaining the geometrical stability of said panel member.

Cretti does not appear to specifically disclose "said inner surface of said first panel member having non-adhesive properties in relation to hardened concrete held in said form space and said inner surface being laminated with a suitable plastic film to strengthen said first panel member" or that the first panel is adapted to be compressed "due at least in part to said lamination of said inner surface of said first panel member with said plastic film of said inner surface of said first panel member."

However, Long, Sr. et al. discloses application of a polypropylene layer upon both surfaces of a foamed plastic panel member. Therefore, to have further provided a polypropylene film along one or both sides of the Boeshart form panel 6, thus serving to encase the panel in a protective layer as well as allow for interchangeability between sides of each form panel, would have constituted an obvious to one having ordinary skill in the art at the time the invention was made as taught by Long, Sr. et al.

As for **claims 110, 111, and 130**, Cretti discloses a spacer 1 generally being transversely positioned between said first and second panel members, said spacer holding said first and second panel members in generally transversely spaced relation to each other, said spacer comprising: a transverse tie member 4 having a first end and an opposite second end, said first end being adapted for securing said transverse tie member to a first connector mounted to said first panel member and said second end

being adapted for securing said transverse tie member to a second connector mortared to said second panel member; first and second rod members 20 interconnected to and oriented generally orthogonally to, said transverse tie member.

As for **claim 110**, Cretti discloses at least one compression member 19 connected to said transverse tie member and oriented orthogonally to said tie member; said compression member being in abutment with at least one other component of said panel unit.

Claims 24, 23, and 25 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 89-98 are allowed.

### ***Response to Arguments***

Applicant's arguments filed April 23, 2009 have been fully considered but they are not persuasive. Applicant's arguments with respect to the rejection of claims under 35 U.S.C. 112, first paragraph, found with pages 31 to 34 of the response, have been noted. However, the passage within paragraphs [0088], [0074], and [0085] do not serve to support the newly added recitation at lines 27-31 of claim 132. Nowhere within the original specification is there found any language to "wherein the lamination of said inner and outer surfaces with said plastic film permits the material of said first panel

member to be slightly compressed by said first connector resulting in the formation of a rigid or semi-rigid connection between said first panel member and said spacer”.

Applicant's argument found within the second full paragraph on page 35 of the response is not found persuasive at least as may be directed to those claims rejected under Boeshart as modified. The claims reciting language that positively sets forth “compression” do not appear to have been rejected over the prior art of record. Otherwise, any language directed to intended effect or desired arrangement

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Safavi/  
Primary Examiner, Art Unit 3637

M. Safavi  
July 17, 2009